



# 2006

## Juvenile Sentencing Guidelines Outcome Analysis: March 2006

At the request of the Juvenile Subcommittee of the Utah Sentencing Commission, a review of sanction consistency with the Juvenile Sentencing Guideline Matrix (Guidelines) was conducted during February 2006. The review conducted was of all sanctions with a hearing date within Fiscal Year 2005, or between July 1, 2004 and June 30, 2005. An effort was made to systematically review inconsistent sentences to determine the accuracy of the SAS program (program) used to find the suggested Guideline sanction, to determine the proportion of projected inconsistent sanctions that were, in fact, consistent, and to discover patterns in sentences that were truly inconsistent with the Guideline recommendation. The analysis only examined sanction consistency falling within the continuum of probation through secure facility.

### Initial Analysis

As depicted in **Table 1**, a total of 3,319 sanctions were included in the analysis. Of these, the majority, 2,567 or 77.3% of the total, fell within the probation category on the Guidelines. Of the remainder, 410 (12.4%) qualified for state supervision, 143 (4.3%) qualified for community placement, and 199 (6.0%) qualified for secure facility. These proportions are comparable to previous reviews of consistency with the Guidelines. In prior reviews, it was discovered that more juveniles were qualifying for the most severe sanction type, secure facility, than qualified for community placement.

**Table 2** shows the initial outcomes in terms of sanction consistency with the Guideline. As in previous analyses of the Guidelines, consistency between actual sanction and Guideline recommendation remains quite low. According to the FY 2005 data, sanctions appear to be inconsistent with the Guideline recommendation between two-thirds to three-quarters of the time. Only in about one-third to one-quarter of the cases was there consistency between what the Guideline recommended and the sanction the

**Table 1: Guideline Qualification**

	<i>n Qualifying</i>	<i>% Qualifying</i>
<b>Probation</b>	2,567	77.3%
<b>State Supervision</b>	410	12.4%
<b>Community Placement</b>	143	4.3%
<b>Secure Facility</b>	199	6.0%
<b>TOTAL</b>	3,319	

juvenile received. Highest consistency was found within the sanction of probation, wherein 34.9% of the cases there was agreement between the sanction and the Guideline, and inconsistency was found in 65.1% of the cases. Lowest consistency was discovered with juveniles who qualified for state supervision. Here, 21.7% of the juveniles who qualified for state supervision actually received a sanction of state supervision while 78.3% of those qualifying for state supervision did not receive that sanction.

When inconsistencies were discovered, the sanctions received are generally less restrictive than those recommended by the Guideline. **Table 3** looks only at cases of disagreement between

Researchers from the Utah Sentencing Commission hand reviewed 173 of the cases where inconsistency was discovered between the Guideline and the sanction received. These cases were randomly selected within

each category. This hand review was conducted by visually inspecting the case history of each of the juveniles, with their hearing dates sorted sequentially, from oldest to most recent. In this way, researchers could understand previous sanctions the juvenile may have received or may currently be under. With the exception of juveniles who qualified for probation, a large proportion of the inconsistent sanctions were reviewed by researchers.

**Table 2: Consistency of Sanction**

	n Consistent	% Consistent	n Inconsistent	% Inconsistent
Probation	896	34.9%	1,671	65.1%
State Supervision	89	21.7%	321	78.3%
Community Placement	32	22.4%	111	77.6%
Secure Facility	66	33.2%	133	66.8%
<b>TOTAL</b>	<b>1,083</b>		<b>2,236</b>	

the sanction received and the Guideline. For probation, most of the inconsistent sanctions received, 62.4%, were less restrictive than probation, while the remaining 37.6% were more restrictive. For state supervision, 72.9% of the inconsistent sanctions received were less restrictive than state supervision, while 27.1% were more restrictive. For community placement, 91.0% of the inconsistent sanctions were less restrictive, while 9.0% were more restrictive. Because secure facility is the most restrictive sanction type, all of the inconsistent sanctions would be classified as less restrictive.

### Research Review of Findings

In an attempt to better understand deviations from the Guidelines, researchers conducted a more extensive review of cases found to be inconsistent with the Guidelines. This was done for a number of reasons. First, the review provides an opportunity to determine the accuracy of the program used historically for analyzing consistency between the Guidelines and the sanctions received. Second, in discovering the proportion of cases where inconsistent sanctions were actually consistent, researchers could project actual consistency rates between the Guideline and the sanction. Finally, by documenting the reasons for inconsistent sentences, researchers could begin to understand why there is often inconsistency between the Guidelines and the sanctions received.

**Table 3: Departure Type**

	Of Inconsistent Sanctions			
	n Above	% Above	n Below	% Below
Probation	629	37.6%	1,042	62.4%
State Supervision	87	27.1%	234	72.9%
Community Placement	10	9.0%	101	91.0%
Secure Facility	0	0.0%	133	100.0%
<b>TOTAL</b>	<b>726</b>		<b>1,510</b>	

In the case of probation, researchers reviewed 57 inconsistent cases, or 3.4% of all inconsistent probation sanctions. For state supervision, researchers reviewed 58 cases, which represented 18.1% of all inconsistent state supervision sanctions. Researchers reviewed just over one-quarter (26.1%) of the inconsistent community placement sanctions, and they reviewed 21.8% of the inconsistent secure facility sanctions.

Because two researchers were involved in the review of cases, an inter-rater reliability check was conducted. Within each category of Guideline recommendation, a random selection of previously reviewed cases was made where one researcher reviewed the case, blinded to the conclusion reached by the other

researcher. Both researchers reached the same conclusion in 90% of the cases reviewed for probation, state supervision, and community placement. The researchers reached the same conclusion in 100% of the secure facility cases reviewed. These

**Table 4: Case Review Information**

	n Reviewed	% Reviewed	Inter-rater Reliability
Probation	57	3.4%	90.0%
State Supervision	58	18.1%	90.0%
Community Placement	29	26.1%	90.0%
Secure Facility	29	21.8%	100.0%
<b>TOTAL</b>	<b>173</b>		

	<i>n Changed to Consistent</i>	<i>% Changed to Consistent</i>	<i>Projected n Overall to Change to Consistent</i>
<b>Probation</b>	7	12.3%	205
<b>State Supervision</b>	10	17.2%	55
<b>Community Placement</b>	4	13.8%	15
<b>Secure Facility</b>	1	3.4%	5

figures reflect high reliability in the conclusions drawn regarding the cases reviewed.

**Table 5** outlines the findings of researcher’s individual case review, as well as the projected changes to initial Guideline consistency findings. Overall, researchers discovered the program used historically in determining Guideline consistency is generally accurate. The program was least accurate with regard to state supervision, where hand review found 17.2% of the cases reviewed were, in fact, consistent. The program was most accurate in examining secure facility recommendations. With secure facility, researchers found that only 3.4% of inconsistent cases reviewed were actually consistent. Looking at probation and community placement, 12.3% and 13.8% of the cases were found to be consistent, respectively.

The proportion of inconsistent sanctions revised to be consistent with the Guidelines was projected against the total number of

	<i>Initial % Consistent</i>	<i>Projected % Consistent</i>	<i>Initial% Inconsistent</i>	<i>Projected % Inconsistent</i>
<b>Probation</b>	34.9%	42.9%	65.1%	57.1%
<b>State Supervision</b>	21.7%	35.2%	78.3%	64.8%
<b>Community Placement</b>	22.4%	33.1%	77.6%	66.9%
<b>Secure Facility</b>	33.2%	35.5%	66.8%	64.5%

inconsistent sanctions in each category. This was done to make a projected adjustment to the consistency rates initially discovered and reported. The projected change of cases from inconsistent to consistent sanctions is found in the last column of **Table 5**.

The newly projected consistency rates are depicted in **Table 6**. The adjusted rates were calculated by taking the projected change from inconsistent to consistent cases from **Table 5**, adding the projected number to the initial consistent cases, and subtracting the projected

number from the initial inconsistent cases.

**Table 7** provides a clear examination of the projected consistency rates compared to the initial consistency findings by each sanction category. The largest consistency improvement was within the category of state supervision, where consistency improved from 21.7% to 35.2%. Community placement consistency

	<i>n Consistent</i>	<i>% Consistent</i>	<i>n Inconsistent</i>	<i>% Inconsistent</i>
<b>Probation</b>	1,101	42.9%	1,466	57.1%
<b>State Supervision</b>	144	35.2%	266	64.8%
<b>Community Placement</b>	47	33.1%	96	66.9%
<b>Secure Facility</b>	71	35.5%	128	64.5%
<b>TOTAL</b>	<b>1,363</b>		<b>1,956</b>	

increased from 22.4% to 33.1%, while probation consistency increased from 34.9% to 42.9%. The smallest improvement was secure facility, which increased from 33.2% to 35.5%.

Although the hand review of cases improved the categorical consistency rates between the Guideline and the sanction received, consistency rates overall are still generally low. In every sanction

category, after making the projected adjustment, consistency rates still fell below the 50% threshold. Probation appears to have the highest overall consistency rate, while the consistency rates for state supervision, com-

munity placement, and secure facility are quite similar. Among these sanction types; one sanction in three appears to be consistent with the Guideline recommendation.

---

## *Describing Cases Where Inconsistent Sanctions Became Consistent After Review*

As CCJJ Researchers reviewed individual instances of inconsistency with the guidelines, notes were taken to document what had occurred. As noted previously, only a limited number of cases were found to actually be consistent with the guideline. The following discusses what was found in these inconsistent cases that, after hand review, were found to be consistent with the guideline.

**Probation** Most commonly, the probation situations found to be consistent with the guidelines were cases where the juvenile was either already on probation or a sanction type more restrictive than probation. These orders were either continued or were started in close enough proximity in time to assume the juvenile was still on that sanction type. In only one case did the juvenile actually receive probation as the sanction and the computer program failed to recognize it as such.

**State Supervision** In several instances where there appeared to be an inconsistency with the sanction of state supervision, the computer program failed to recognize it as such. Generally, in these instances, there was also a code for probation along with the sanction code for state supervision. Similar to probation, some situations arose where the juvenile was either currently on state supervision or a more restrictive sanction type. Again, these sanctions were commonly continued. The final scenario discovered was the placement of a juvenile into observation and assessment (O&A) and placed into state supervision one to two months after the hearing date in question.

**Community Placement** Only a few cases qualifying for community placement changed to consistent. In one instance, the juvenile received sanction codes for both community placement and for state supervision. Researchers, upon review, considered this sanction consistent. A few cases had the juvenile placed into O&A with a subsequent placement into community placement. One juvenile was in a secure facility placement at the time of the new hearing for an offense that qualified the youth for community

placement. Researchers considered the continuation of the secure facility placement as consistent.

**Secure Facility** Only one case was changed to a consistent sanction in the category of secure facility. In this case, the sanction code was clearly for secure facility. Somehow, the computer program failed to discover it.

## *Describing Patterns Where Sanctions Were Inconsistent with Guidelines*

As noted previously, CCJJ Researchers described each hand reviewed case where the sanction received was inconsistent with the guideline recommendation. The following discusses what researchers discovered among those inconsistent cases that remained inconsistent after review.

**Probation** Several of the juveniles were in the custody of the Division of Child and Family Services (DCFS), and it appears the judges may have been providing opportunities at DCFS to work before moving on to a probation placement. Some juveniles presented with felony sex offenses or other violent offenses. Often, in these cases, judges ordered more intensive supervision than probation. Several of the juveniles qualifying for probation were placed into O&A and subsequently placed on state supervision or community placement at the next hearing date. For juveniles presenting with misdemeanor drug charges, judges often ordered other sanction types such as fines, suspension of driver licenses, or random drug testing. Finally, if the juvenile had already been on probation, state supervision, or community placement, judges appeared order the youth into the next most restrictive level of supervision.

**State Supervision** Several of the juveniles qualifying for state supervision were placed into O&A, and subsequently placed on community placement. Many juveniles also had either very short or no offense histories and present with 1st or 2nd degree sex offenses. Quite often, these juvenile received other sanction types or probation. Some of the juveniles here also received the “step-up” sanction scenario where the judge moved the juvenile

---

into the next most restrictive sanction type from the sanction the juvenile either was on or recently had received.

**Community Placement** Looking at juveniles qualifying for community placement on the guidelines, we discovered several juveniles with prior sex abuse felonies or aggravated assaults who now, many years later, present with a misdemeanor or 3rd degree felony and are receiving less than community placement. In these situations, there appears to be a “forgiveness factor,” where the current offense is almost treated as if it were the first offense. This occurs because the prior offense is a person felony offense which automatically places the juvenile at Row IV or higher on the guideline matrix. (Most of these juveniles were in Column H or G and in Row IV of the guideline matrix) There does not appear to be a consistent sanction for these juveniles, as their actual sanction ranged from other sanctions to state supervision.

In a few instances, juveniles had a very large number of misdemeanor prior offenses pushing the youth to Row IV on the guideline matrix. In one instance, all 10 were handled on the same day, each representing a distinct episode. In these cases, juveniles qualified for community placement and the sanction received was less. In one case, the juvenile’s presenting offense appeared to be attempted murder, and the judge put the juvenile into a secure facility.

**Secure Facility** Most commonly, the juveniles found here committed a felony after community placement. It appears that the judge decided to keep the juvenile on community placement, rather than place the juvenile into secure facility. In a few cases, the juvenile had a prior sex felony, which pushed the juvenile up to Row IV on the guideline matrix, and subsequently had any type of person felony. In some instances, the juvenile did not receive a secure facility placement. A similar situation also arose with prior aggravated assaults coupled with a new person felony of any type. Some of these also did not result in a secure facility placement.

## *Conclusion*

In examining FY2005 data, it is clear the juvenile guideline matrix does not accurately reflect judicial practice. This is not to say judges are making inappropriate placements. More likely, it appears the matrix, in its current format, does a poor job of describing Utah juvenile court decision making. The current analysis indicates the SAS program developed at the inception of the juvenile guideline matrix is fairly accurate in scoring juvenile’s delinquency history and placing them in the appropriate cell on the guideline matrix. After reviewing individual cases and adjusting the overall findings, consistency between the matrix and the sanction still fall in the 30% to 40% range.

In reviewing individual cases, some patterns begin to emerge. Those patterns could form a basis for modifying the guideline matrix. For example, it appears that, in some cases, there is a forgiveness factor in judicial practice. This appears especially true when several years separate delinquency episodes and the more recent episode involves comparatively minor behavior. It also appears that sex crimes often form an anomaly in the guidelines. Sometimes they are treated more harshly than the guideline would warrant, while other times they are treated like a minor offense. In this same context, we found that, in some cases, prior person felonies push youth much higher on the guideline matrix than a judge believes is warranted. Similarly, a large number of prior misdemeanors creates the same situation.

All of this information warrants further consideration. At this time, it is difficult to determine what impact making these types of adjustments would have on those sanctions that currently are consistent with the matrix. However, the Utah Sentencing Commission should seriously consider what are the purposes of a guideline system, and if the current system is accomplishing those purposes.